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UNCLAS SECTION 01 OF 02 KABUL 001684

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SUBJECT: UPPER HOUSE IN QUANDRY OVER FATE OF PROVINCIAL  
COUNCIL-ELECTED MEMBERS

REF: KABUL 1350

11. (SBU) SUMMARY. Parliament's Upper House faces a potential crisis this fall when new provincial councils will select replacements for two-thirds of the chamber. If the councils follow the Constitution, they will elect their representatives to the Upper House around Oct. 1, mid-way through a legislative session. Many incumbent MPs intend to serve the duration of their four-year terms, however, through the end of this year. Other MPs and parliamentary staff expect the new MPs to take their seats immediately after being chosen by the councils. Few have noticed the contradiction, leading us to predict the possibility that yet another political headache may sideline Parliament's legislative work. We are urging MPs to reach a political consensus that would solve the problem before the Aug. 20 presidential and provincial council elections. End Summary.

A Complicated Conundrum  
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12. (SBU) Parliament's Upper House consists of 34 MPs appointed by the president to five-year terms, 34 chosen by provincial councils (PCs) to four-year terms, and 34 designated to be appointed by district councils (DCs) to three-year terms. Because the government has not yet held elections for district councils, PCs each appointed an extra MP in 2005 to facilitate the opening of the new government's first Parliament. Last January, President Karzai extended the DC-designated MPs' terms by an extra year. Some opposition MPs in the Lower House initially criticized Karzai's extra-constitutional executive order, but dropped their complaints when they realized that without the 34 DC-designated MPs, the Upper House Q) and by extension the entire bicameral legislature Q) would become illegitimate.

13. (SBU) The Constitution requires PCs to select their Upper House representation within two weeks of their formation, after the certification of election results. We expect certification of the Aug. 20 elections to take place around mid-September, meaning the new PCs would select their Upper House delegate around Oct. 1. Parliament's fall legislative session will last until early December. Following a delay in the 2005 Parliamentary and provincial council elections, MPs did not take office until December 2005, several months later than planned. Many of those MPs with four-year terms expect to serve through December 2009. However, other MPs (usually those with five-year terms unaffected by this year's confusion) Q) and the Upper House's professional staff Q) say the new MPs should take their seats immediately and any incumbents not re-elected by their PCs should leave office. Staff admit there is no precedent or procedure in place to inform MPs when to relinquish their status and privileges, and do not know how to handle the expected dual claims to up to two-thirds of the Upper House's seats.

A Few Early Thinkers Propose Solutions  
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¶4. (SBU) MP Mahbooba Hoqquqmal, a legal scholar and chairwoman of the Upper House Legislation Committee, told PolOff she hoped the Independent Election Commission (IEC) would delay the certification of results of the PC elections until later in the fall. Another option would be to ask the PCs to refrain from selecting their Upper House replacements until the current Parliament finished its session, though she admitted some would view that move as a violation of the Constitution's requirement that PCs name their representatives within two weeks of their formation. Hoqquqmal promised to discuss options and solicit advice from IEC officials soon after Parliament reconvened on July 20. One Upper House senior staffer proposed that the Upper House issue a decision to seat the new MPs upon their elections.

¶5. (SBU) Incumbent MPs wishing to fill out their terms can file complaints with the Supreme Court, which would almost surely let the case sit until after the incumbents' terms naturally expire. Neither Hoqquqmal nor the staffer thought seating freshmen MPs mid-way through a legislative session would have negative consequences for the chamber's handling of ongoing legislative matters. Few incumbent MPs and professional staff had a deep grasp of legislative issues anyway, Hoqquqmal said, so new MPs would not be out of place. Still, it's doubtful new MPs assigned to committees that have been studying legislation for months would be able to constructively add to the review process.

#### Battle Over Seats Would Deadlock Parliament

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¶6. (SBU) The Upper House's leadership (Q) both professional and elected (Q) is ill prepared to handle a dispute over its own members' legitimacy. Discussions with advisors to Speaker Sebghatullah Mojaddedi (who was away from the country for much of the past few months), Deputy Speaker Hamed Gailani, and other key MPs show none has been thinking seriously about the issue. When told of the potential conflict, Gailani seemed surprised, but promised he would consider solutions. The Upper House's top legal staffer said all she could hope for was that the PCs would re-elect the incumbents in order to avoid a potential crisis.

¶7. (SBU) Given that other seemingly minor legal disputes have resulted in lengthy delays in Parliament's work schedule, this potential dispute could bring Parliament to a halt at a time when the next administration will be taking office and several bills of top priority to the government and international community await action. The Embassy will continue to raise the issue with leading MPs, professional staff, and legislative mentors at the USAID-funded Afghanistan Parliamentary Assistance Program.

#### Ongoing Issues With Parliament's Functionality

¶8. (SBU) The disagreement over the legality of PC-appointed MPs' terms will likely end with a political consensus of least resistance, as have numerous disputes over Parliament's status and powers in the past. Any disruption to Parliament's existing functionality should be minor. However, the unsynchronized timing of current MPs' terms and the elections for their replacements is yet another reminder of unintended inconsistencies in this Constitution. Lower House MPs are likewise unprepared to resolve constitutional discrepancies for their own elections next year (reftel).

¶9. (SBU) Without a dedicated effort to correct these constitutional inconsistencies, Parliament will face these challenges every year, given the late start in 2005 that forced both houses off the electoral schedule laid out in the Constitution. Such political disagreements repeatedly interfere in Parliament's lawmaking responsibilities and

weaken its influence vis-à-vis the much-stronger executive branch. Extra-constitutional political fixes solve problems in the short term, but erode politicians' respect for the Constitution and rule of law.

¶10. (SBU) The Constitution mandates 19 elections for president, Parliament, provincial councils, and district councils over the next 17 years. Afghan authorities and the international community face a challenge in improving the effectiveness of Afghanistan's elected institutions, more broadly, and solving the anomalies in the Afghan Constitution and law specifically before these annual constitutional crises become the norm. One option will be comprehensive constitutional reform.  
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